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22/11/07

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: HON'BLE SHRI JAGDISH BHALLA, Ag. CJ. &
HON'BLE SHRI SATISH K. AGNIHOTRI, J.

Writ Petition (C) No. 3612 of 2007

Petitioner — Subash Mohapatra, Aged about 34 years, S/o Late Shri Jalandhar Mohapatra, R/o MIG – 22, Sahayog Park, Mahaveer Nagar, Ravigram PO., Raipur, Chhattisgarh – 492 001

Versus

Respondents

1. Union of India, Ministry of Home Affairs, Government of India, New Delhi
2. State of Chhattisgarh, Through : The Chief Secretary, Government of Chhattisgarh, DKS Bhawan, Mantralaya, Raipur (CG)
3. State of Chhattisgarh, Through : Secretary, Department of Home Government of Chhattisgarh, DKS Bhawan, Mantralaya, Raipur (CG)
4. Vishwa Ranjan Additional Director Intelligence Bureau Government of Chhattisgarh, Raipur (CG)

Writ Petition under Article 226 of the Constitution of India

Present : Shri Saurabh Dangi, counsel for the petitioner.
Shri S.K. Beriwal, Standing counsel for Union of India/ respondent No.1.
Shri Prashant Mishra, Advocate General with Shri Yashwant Singh, Government Advocate for the State.
Shri Shashank Thakur, counsel for respondent No.4.

ORAL ORDER

(Passed on 24th October, 2007)

The following oral order of the Court was passed by Hon'ble Jagdish Bhalla, Ag. C.J.

Yesterday, learned counsel for the petitioner insisted that 24 hours time be allowed for filing rejoinder affidavit. However, today again he is insisting for further time.

Through this petition the petitioner has prayed for issuance of a writ in the nature of *quo-warranto* against respondent No.4 who joined as Director General of Police, Chhattisgarh on the ground that respondent No.4 has already attained the age of superannuation on 31-03-2007. Therefore, it was prayed that a writ of *quo-warranto* be issued ousting respondent No.4 from the post in question. The record has been placed before us and we have also perused the record.

It has been contended on behalf of the respondents that the date of birth of respondent No.4 is 01-04-1952 and he has been appointed as Director General of Police, Chhattisgarh in accordance with law.

Learned counsel for the petitioner failed to indicate any ground which could lead us to the point that respondent No.4 was appointed as Director General of Police, Chhattisgarh in violation of law or on the ground of *mala fide*. The record produced and filed before this Court clearly indicates beyond any doubt that the date of birth of respondent No.4 is 01-04-1952.

We have analytically examined the matter from another angle i.e. if we take the argument of learned counsel for the petitioner that the date of birth of respondent No.4 is 01-04-1947, in such circumstances respondent No.4 could not have appeared in the written examination held by Union Public Service Commission for entry in Civil Services for 1972 batch being over-aged. Further, if the date of birth of respondent No.4 as alleged by the petitioner has been modified/corrected, then it was open to challenge. We find that the same is not under challenge. We find that neither there is any violation

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of law by the competent authority while issuing letter of appointment nor there is any allegation of *mala fide*. We further find that respondent No.4 has not usurped any office as alleged in light of the fact that he joined the office of Director General of Police, Chhattisgarh on the basis of valid order of appointment.

In the light of above, we are of the considered opinion that the petitioner has failed to substantiate any ground for issuance of a writ in the nature of *quo-warranto* or any violation of statutory provisions/rules. Accordingly, it is not a fit case for issuance of writ of *quo-warranto* as prayed and the writ petition is dismissed. Costs easy.

Sd/-
Acting Chief Justice

Sd/-
Satish K. Agnihotri
Judge

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